STATE OF NEW JERSEY

BOARD OF PUBLIC UTILITIES

IN THE MATTER OF THE PETITION OF NUI UTILITIES, INC.

(d/b/a ELIZABETHTOWN GAS COMPANY) AND AGL RESOURCES INC.

FOR APPROVAL UNDER N.J.S.A. 48:2-51.1 AND N.J.S.A. 48:3-10 OF A

CHANGE IN OWNERSHIP AND CONTROL

BPU DOCKET No. GM0407_________

JULY 30, 2004

TESTIMONY OF

KEVIN P. MADDEN

ON BEHALF OF

NUI UTILITIES, INC.

AND

AGL RESOURCES INC.

Q. Please state your name and position.

A. My name is Kevin P. Madden and I am Executive Vice President for Distribution and Pipeline Operations of AGL Resources Inc. ("AGLR"). I am responsible for all field operations of AGLR's three natural gas utilities – Atlanta Gas Light Company, Chattanooga Gas Company and Virginia Natural Gas, Inc. I am also responsible for strategic policy and management oversight of AGLR's utilities, as well as AGLR's regulatory, engineering construction, and gas operational functions.

Q. What is the purpose of your testimony?

A. The purpose of my testimony is to discuss the benefits of the proposed acquisition of NUI Corporation ("NUI") and its wholly owned subsidiary NUI Utilities, Inc. ("Utilities") (d/b/a Elizabethtown Gas Company) ("ETG"). My testimony will discuss the impact of the acquisition on competition, rates, employees and overall operations and reliability in order to aid the New Jersey Board of Public Utilities (the "Board") in its consideration of the proposed acquisition pursuant to <u>N.J.S.A.</u> 48:2-51.1.

Q. Does the Merger Agreement place any conditions on the acquisition?

A. Yes. First, the Agreement and Plan of Merger ("Merger Agreement") provides for financial conditions to the acquisition that are discussed in more detail in Mr. Richard T. O'Brien's testimony. The Merger Agreement also provides for certain Acceptable Order conditions relating to regulatory and rate matters that must be substantially satisfied before the transaction may close. The failure to obtain approval of certain regulatory and rate conditions may be considered a material adverse effect under the Merger Agreement and thus prevent the transaction from closing. These Acceptable Order conditions are listed below:

1. An Acceptable Order will not prevent ETG from operating at rates not lower than its current base tariff rates for the three years following the acquisition.

2. An Acceptable Order will allow ETG to make a filing with the Board to recover, outside of a normal rate case, certain capital expenditures to improve customer service and the safety and reliability of the ETG distribution system.

3. An Acceptable Order will not restrict AGLR's ability to implement changes to ETG's business, including the workforce, and to retain all benefits from such changes, until the conclusion of ETG's next base rate case.

4. An Acceptable Order will authorize ETG to enter into an asset management agreement with an affiliate of AGLR on terms similar to ETG's current asset management arrangement or, in the alternative, to enter into another asset management arrangement.

5. An Acceptable Order will recognize that the Board's current policy on rate treatment for costs incurred for the environmental remediation of manufactured gas plants allows for the recovery of prudently incurred costs, including carrying costs, in base rates and/or in the remediation adjustment clause.

6. An Acceptable Order will absolve AGLR and its subsidiaries after closing from any liability associated with the circumstances and transactions addressed by the Final Report on Focused Audit of NUI, Utilities and ETG in Docket No. GA03030213, presented to the Division of Audits by the Liberty Consulting Group and the Stier Anderson Report.

7. An Acceptable Order will not impose conditions that have the effect of requiring AGLR to conduct business, or govern the affairs of AGLR or any of its subsidiaries after closing, in a manner that is adverse to AGLR or those subsidiaries.

The first five of these conditions are discussed in more detail below. The last two conditions are discussed in the testimony of Ms. Paula G. Rosput.

STATUTORY STANDARDS

Q. What are the statutory standards that the Board must consider when evaluating a request for approval of a change in control?

A. N.J.S.A. 48:2-51.1 provides that "[i]n considering a request for approval of an acquisition of control, the board shall evaluate the impact of the acquisition on competition, on the rates of ratepayers affected by the acquisition of control, on the employees of the affected public utility or utilities, and on the provision of safe and adequate utility service at just and reasonable rates." I discuss each of these standards below.

Impact on Competition

Q. Will the change in control have any impact on competition in the market for gas distribution services in New Jersey?

A. No. The acquisition will simply effect a change in ownership of NUI. Because ETG will remain the same entity post-acquisition serving the same market, the proposed acquisition will not have any adverse effect on competition in the market for gas distribution services in New Jersey. AGLR does not own or have an interest in any other gas utility in the state of New Jersey.

AGLR's utilities use state-of-the-art technology and field-tested best practices in their drive to provide superior service. We believe that the integration of AGLR's state-of-the-art technology and field-tested best practices into ETG's operations will benefit customers and enhance ETG's ability to serve its customers.

Impact on Rates

Q. Will the change in control have any impact on ETG's current rates?

A. No. ETG will continue to provide service at ETG's Board-approved tariff rates. The acquisition will not detrimentally affect ETG's existing base tariff rates. The Merger Agreement provides that an Acceptable Order by the Board will not require AGLR to operate ETG at base rates less than its current, authorized tariffs for at least three years from the date of closing of the transaction. In addition, AGLR commits not to propose an increase in ETG's base rates to be effective in the three-year period following the acquisition. In effect, this Acceptable Order condition and AGLR's commitment not to propose increased rates in the three-year period following the acquisition will benefit ratepayers by providing rate consistency while still delivering customer service improvements with no increase in base rates.

In exchange for its commitment not to raise base rates, the Merger Agreement establishes an Acceptable Order condition that the Board not restrict AGLR's ability to implement reasonable changes at ETG and to retain all benefits of such changes until the conclusion of ETG's next rate case. In assessing the proposed acquisition, AGLR has determined that maintaining rates at current levels for the next three years strikes an appropriate balance between the risks that AGLR faces in acquiring financially-distressed NUI and attendant risks with the ability to capture any benefits that result from the acquisition.

Notwithstanding the rate conditions of the acquisition, AGLR fully intends to invest appropriate levels of capital to improve service on ETG. To make these capital investments possible, the Merger Agreement provides that an Acceptable Order will allow ETG to make a filing with the Board to recover, outside of a normal rate case, certain capital expenditures to improve customer service, safety and distribution system reliability. One specific capital investment that AGLR intends to make shortly after the acquisition is to begin upgrading ETG's information technology ("IT") infrastructure, as I discuss below.

Q. How will the change in control affect the $28 million credit that Utilities must make to ratepayers pursuant to the Board's Final Order on the Liberty Audit Report?

A. AGLR will honor the April 14, 2004 Settlement Agreement that was approved in the Board's Final Order issued on April 26, 2004. The Final Order establishes an incremental refund schedule under which Utilities would refund $28 million plus interest to ratepayers in amounts ranging from

$7 million to $5 million over the next five years. The Final Order also provided that, upon the sale of Utilities, all outstanding amounts shall be paid in full by Utilities within a period to be determined by the Board. As provided in the Final Order, after the acquisition closes, AGLR will refund, within a period to be determined by the Board, all outstanding amounts due under the terms of the Settlement Agreement. After the acquisition closes, AGLR would propose to the Board to make the entire outstanding amount available to ratepayers on an expedited basis. AGLR preliminarily estimates that a lump-sum refund of the outstanding balance of the $28 million would result in a credit of approximately $74 on every residential heating customer's monthly bill (individual amounts will vary based on each customer's usage). If this refund were made in January 2005, customers would benefit from significantly lower gas bills at a time of the year when gas costs are traditionally highest. Thus, approval of the acquisition will benefit ratepayers by ensuring that the refund is made on an expedited basis, rather than the incremental schedule under which Utilities is currently required to distribute the refund.

Finally, AGLR seeks a finding by the Board that, after the acquisition transaction closes, the non-monetary provisions of the April 14, 2004 Settlement Agreement will give way to a regulatory model more appropriate both to registered companies under the Public Utility Holding Company Act of 1935, as in the case of AGLR, and to companies that have not been associated with the recent NUI experience. I expect to be discussing these issues more fully with the regulators over the course of this proceeding.

Q. **What has been AGLR's experience with setting rates for its other utilities?**

A. AGLR prides itself on being able to provide a high level of customer service and safe and reliable distribution service to its customers at stable rates. Virginia Natural Gas, Inc., for example, has operated without a rate increase since 1998 and Atlanta Gas Light Company, AGLR's largest utility, has not increased its base rates since 1993.

Q. **Are there are any other rate conditions that the Merger Agreement imposes on the acquisition that you would like to discuss?**

A. Yes. The Merger Agreement provides that an Acceptable Order approving the acquisition will recognize what we understand to be the Board's current policy on rate treatment for costs incurred for the environmental remediation of manufactured gas plants that allows for recovery of prudently incurred costs, including carrying costs, in base rates and/or in the remediation adjustment clause.

Impact on Employees

Q. **Please discuss the impact of the change in control on employees.**

A. At the corporate level, it is clear that there is some overlap among employees at AGLR, NUI and Utilities, particularly in the "corporate services" area, including accounting, finance, legal, and public relations. AGLR intends to work closely with NUI management to develop a framework to address any redundancies that become apparent as AGLR integrates NUI's corporate management into AGLR's existing management structure.

At the utility level, AGLR will honor both the specific language and the spirit of all collective bargaining agreements. From its experience running public utilities in three other states, AGLR has learned that local employees are the heart and soul of a company and are vital to maintaining a connection to the local community. AGLR is still in the process of reviewing ETG's utility operations to determine the appropriate employee levels in order to continue to ensure that the franchise is operated safely and reliably. As part of this evaluation, we will appropriately balance the necessity to improve customer service, support our long term commitment to Utilities' employees and contribute to the economic vitality of the ETG service territory.

In recognition of the fact that some changes to the workforce may be necessary in order to implement changes to the business following the acquisition, the Merger Agreement provides, as a condition of the acquisition, that an Acceptable Order will not restrict AGLR's ability to make such changes.

Impact on Overall Customer Service, Safety and Reliability

Q. Please describe the impact of the change in control on overall customer service and the safety and reliability of ETG's system.

A. At the outset, AGLR believes that ETG is currently providing safe and reliable service to its customers. During the transition process, AGLR will integrate its state-of-the-art technology and field-tested best practices into ETG's operations. AGLR is confident that it will be able to improve upon ETG's customer service and safety and reliability record over a period of time. For example, as discussed in more detail below, AGLR will immediately focus its efforts to improve customer service by investing in ETG's IT infrastructure.

Q. Please describe AGLR's commitment to customer service.

A. AGLR is a company that is committed to providing outstanding customer service to all of its utility customers. AGLR's gas distribution companies utilize state-of-the-art technology to provide outstanding customer service. AGLR maintains a comprehensive utility metric program to continuously monitor important aspects of customer service, safety and reliability. These metrics include customer service and satisfaction (as measured by call response times and customer feedback) as well as safety-related metrics such as leak response times, and operational measures such as capital costs per new meter (essentially, the total cost to hook up a new gas customer).

Q. Describe the improvements in customer service that ETG customers could expect following the acquisition.

A. Over the past few months, AGLR has learned a great deal about ETG's operations. Based on this knowledge, AGLR has determined that it should be able to improve and expand upon the services that ETG is currently able to provide to its customers. To achieve these improvements and expansions of service, AGLR would like to immediately begin integrating ETG into AGLR's established IT programs and new IT programs that are currently being implemented across all of its utility operations.

Q. How would AGLR expect to recover capital expenditures that will be made to improve service on ETG?

A. In order to ensure that AGLR will be able to recover capital expenditures that will be made to improve service on ETG, the Merger Agreement provides that an Acceptable Order would allow ETG to make a filing, outside of a normal rate case, to seek to recover expenditures that are made to improve customer service and the safety and reliability of ETG's distribution system. In Georgia, Atlanta Gas Light Company has employed a similar procedure at the Georgia Public Service Commission to establish a pipeline replacement rider that recovers the costs, return and carrying charges associated with a pipeline replacement program. AGLR anticipates that, shortly after the acquisition is approved, ETG would make a filing with the Board to propose a similar mechanism to recover the costs associated with upgrading ETG's IT infrastructure.

Q. Please describe the impact of the change in control on the safety and reliability of the ETG system.

A. AGLR will apply its utility metrics, state-of-the-art technology and field-tested best practices and will continually monitor and strive to improve the safety and reliability of the ETG system.

Q. Are there any other conditions relating to ETG's operations?

A. Yes. The Merger Agreement imposes a condition that an Acceptable Order will allow AGLR to contract with its affiliate Sequent Energy Management, L.P. ("Sequent") for service on similar terms as ETG's current gas procurement and asset management contract for a period of three years. Under the asset management agreement currently in place, ETG transferred all of its supply and interstate capacity assets to its asset manager, Cinergy Marketing & Trading, LP.

AGLR currently employs asset management programs on all of its utilities. All of the asset management arrangements employed by AGLR's utilities have been approved by the appropriate state public utility commission. In structuring asset management programs, AGLR's first concern is always to establish a program that will benefit the consumer by ensuring reliable service while providing cost savings. To this end, the asset management model that AGLR employs on its utilities provides for revenue sharing between the asset manager and the utilities' ratepayers.

Although, as discussed in Mr. O'Brien's testimony, ETG's current asset management arrangements is a departure from AGLR's existing asset management arrangements, in that it employs an up-front payment to ratepayers rather than revenue sharing, AGLR recognizes that the transition process would be simplified if the Board authorized ETG to enter into an asset management arrangement with Sequent similar to the one that is already in place. AGLR also recognizes, however, that alternatives to ETG's existing arrangement may be able to provide even more benefits and value to ETG's ratepayers. Specifically, AGLR believes that the 50/50 revenue sharing model, in which revenues received by the asset manager are shared equally between ratepayers and the asset manager, may be able to provide more benefits and value to ratepayers than ETG's existing arrangement. AGLR would be receptive to discussing with the Board the possibility of implementing an asset management arrangement with 50/50 revenue sharing.

Q. What are some of the benefits of asset management arrangements for ETG?

A. Asset management arrangements provide a host of benefits to utilities and their customers. The asset management arrangement gives ETG access to more resources with which to serve its customers and provides the asset manager with the opportunity to provide additional flexibility and options to ETG's customers. Moreover, ETG's firm customers benefit from these arrangements whether through sharing or a prepayment mechanism as the net effect is to reduce firm rates from where they would otherwise be set.

In addition, these arrangements have enabled LDCs to maximize the value of idle transportation capacity. In turn, this benefits the ratepayers in the form of lower cost natural gas service. The asset managers provide services outside the usual LDC portfolio in a way that makes for more efficient use of the interstate grid and a more efficient commodity market. Almost certainly, these arrangements have resulted in the more efficient use of interstate capacity.

Thus, from a regulated standpoint, the ability of AGLR and Sequent to step into the existing asset management arrangement or implement an alternative arrangement will provide additional service reliability and other benefits to ETG's ratepayers. The testimony of Mr. O'Brien sets forth the other benefits of such arrangements from the corporate point of view.

Q. Following the acquisition, would the new ETG entity be willing to consider setting performance standards or adopting a consumer report card?

A. Yes. After one year of experience operating ETG, AGLR would be willing to consider setting performance standards or adopting a consumer report card. AGLR must be given at least one year to gain practical experience in running the ETG system. In the interim, AGLR will immediately begin to implement its field-tested utility metrics program, discussed earlier, to monitor, assess and ultimately improve ETG’s performance in critical customer service and reliability areas.

Q. Does this conclude your testimony?

A. Yes.